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3/28/85

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Action	File	Note and Return
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Coordination	Justify	

REMARKS

TO:		ACTION	INFO	DATE	INITIAL
1	DCI				
2	DDCI				
3	EXDIR				
4	D/ICS				
5	DDI				
6	DDA		X		
7	DDO				
8	DDS&T				
9	Chm/NIC				
10	GC				
11	IG				
12	Compt		X		
13	D/Pers				
14	D/OLL				
15	D/PAO				
16	SA/IA				
17	AO/DCI				
18	C/IPD/OIS				
19	NIO/Econ		X		
20					
21					
22					
SUSPENSE		Date			

Remarks

Executive Secretary
28 March 1985
Date

3637 (10-81)

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GPO: 1983 O - 381-529 (732)

THE WHITE HOUSE
WASHINGTON

Executive Registry

85-1348

CABINET AFFAIRS STAFFING MEMORANDUM

Date: 3/27/85 Number: 169155CA Due By:

DD/A Registry

85-1117

Subject: Cabinet Council on Economic Affairs - Friday, March 29, 1985

9:00 A.M. - Roosevelt Room

TOPICS: Pension Policy
Employment Policy

ALL CABINET MEMBERS	Action	FYI		Action	FYI
Vice President	<input type="checkbox"/>	<input type="checkbox"/>	CEA	<input checked="" type="checkbox"/>	<input type="checkbox"/>
State	<input checked="" type="checkbox"/>	<input type="checkbox"/>	CEQ	<input type="checkbox"/>	<input type="checkbox"/>
Treasury	<input checked="" type="checkbox"/>	<input type="checkbox"/>	OSTP	<input type="checkbox"/>	<input type="checkbox"/>
Defense	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Justice	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Interior	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Agriculture	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Commerce	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Labor	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Deaver	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HHS	<input type="checkbox"/>	<input checked="" type="checkbox"/>	McFarlane	<input type="checkbox"/>	<input checked="" type="checkbox"/>
HUD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Svahn	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Transportation	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Chew (For WH Staffing)	<input type="checkbox"/>	<input type="checkbox"/>
Energy	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Education	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
OMB	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
CIA	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
UN	<input type="checkbox"/>	<input checked="" type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
USTR	<input checked="" type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
Chief of Staff	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>	<input type="checkbox"/>
GSA	<input type="checkbox"/>	<input type="checkbox"/>	Executive Secretary for:		
EPA	<input type="checkbox"/>	<input type="checkbox"/>	CCCT	<input checked="" type="checkbox"/>	<input type="checkbox"/>
NASA	<input type="checkbox"/>	<input type="checkbox"/>	CCEA	<input type="checkbox"/>	<input type="checkbox"/>
OPM	<input type="checkbox"/>	<input type="checkbox"/>	CCFA	<input type="checkbox"/>	<input type="checkbox"/>
VA	<input type="checkbox"/>	<input type="checkbox"/>	CCHR	<input type="checkbox"/>	<input type="checkbox"/>
SBA	<input type="checkbox"/>	<input type="checkbox"/>	CCLP	<input type="checkbox"/>	<input type="checkbox"/>
			CCMA	<input type="checkbox"/>	<input type="checkbox"/>
			CCNRE	<input type="checkbox"/>	<input type="checkbox"/>

REMARKS:

There will be a Cabinet Council on Economic Affairs meeting on Friday, March 29, at 9:00 A.M. in the Roosevelt Room (the meeting is not expected to last more than 45 minutes).

The agenda and an additional background paper for the first agenda item are attached.

RETURN TO:

☐ Alfred H. Kingon
Cabinet Secretary
456-2823
(Ground Floor, West Wing)

☐ Don Clarey
☒ Tom Gibson
☐ Larry Herbolzheimer

Associate Director
Office of Cabinet Affairs
456-2800 (Room 129, OEOB)

THE WHITE HOUSE

WASHINGTON

March 27, 1985

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: ROGER B. PORTER *RBP*

SUBJECT: Agenda and Papers for the March 29 Meeting

The agenda and paper for the March 29 meeting of the Cabinet Council on Economic Affairs are attached. The meeting is scheduled for 9:00 a.m. in the Roosevelt Room.

The Council is scheduled to consider two agenda items: the report of the Working Group on Pension Policy and a report from the Working Group on Employment Policy. A paper from the Working Group on Pension Policy was distributed on February 27. An additional paper on "Minimum Funding Waivers" from the Working Group is attached. There will not be a paper distributed in advance of the meeting for the second agenda item.

Attachments

THE WHITE HOUSE
WASHINGTON

CABINET COUNCIL ON ECONOMIC AFFAIRS

March 29, 1985

Roosevelt Room

9:00 a.m.

AGENDA

1. Report of the Working Group on Pension Policy (CM#112)
2. Report of the Working Group on Employment Policy (CM#510)

THE WHITE HOUSE

WASHINGTON

March 25, 1985

MEMORANDUM FOR THE CABINET COUNCIL ON ECONOMIC AFFAIRS

FROM: THE WORKING GROUP ON PENSION POLICY

SUBJECT: Minimum Funding Waivers

Background

The 1974 ERISA law imposed minimum funding requirements on employers who maintain a defined benefit pension plan. The law authorized the Secretary of the Treasury to waive minimum funding requirements to enable companies with substantial business hardships to avoid terminating their pension plans. The Secretary has delegated this responsibility to the Internal Revenue Service.

A plan sponsor can receive minimum funding waivers for up to five years out of any consecutive fifteen year period. The amount waived must be repaid to the plan, with interest, over no more than fifteen years. The Internal Revenue Service normally requires that the entire amount waived become due and payable upon plan termination.

The number of waiver requests received by the IRS has risen from approximately 125 per year in 1978 and 1979 to 1,003 in 1983. No information is available concerning the aggregate dollar amount of these requests. Data concerning the disposition was collected from 1980 through 1982. In the years 1980-1982, the IRS acted on 943 waiver requests, granting 875 (92.8%). Approximately 285 additional requests were closed without action, usually on the plan sponsor's initiative. Plan sponsors often withdraw requests that are about to be denied to avoid the negative implications of a formal denial.

Although the Internal Revenue Service is charged with approving or disapproving waiver requests, the Pension Benefit Guaranty Corporation (PBGC) also has an important stake in these decisions. If a plan terminates and the plan sponsor does not have enough assets to repay the waiver contribution, the PBGC is responsible for promised benefits up to the guarantee limit.

The PBGC conducted an analysis of the Corporation's deficit and found that at least \$100 million of net claims (more than 20 percent of the aggregate deficit) have resulted from waivers of the minimum funding standards. The PBGC estimate includes only the losses due to the termination of plans that have received waivers. It does not include any estimate of

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plan terminations that may have been avoided because of funding waivers. To date there has been no analysis of the effect of funding waivers on the long term viability of firms. The PBGC argues that, in at least some cases, the standards for granting waivers have been excessively liberal, and they have proposed changes in the procedures for granting waivers.

Current Procedures

The IRS does not grant funding waivers if there is no prospect that an employer will survive. The IRS is under pressure to grant funding waivers where survival probabilities are low when there is a possibility that a waiver denial may contribute to an employer's failure, either because the employer must contribute to the plan, or because of the signal a denial sends to the financial community. The IRS is also sensitive to the possibility that a waiver denial may cause an employer to terminate its pension plan.

Although the IRS does not try to minimize the risk to the PBGC when making funding waiver decisions, it does take action that protects the PBGC's interests:

- o The IRS notifies the PBGC of large (over \$50,000) waiver requests and accepts PBGC comments on these cases. The PBGC believes that these comments are disregarded too frequently.
- o The IRS often imposes conditions on waivers that protect the PBGC. These include:
 - Anti-termination provisions that void waivers retroactively if a plan terminates;
 - A requirement that benefit accruals cease;
 - A requirement that assets be transferred from overfunded to underfunded plans; and
 - Making an entire controlled group liable for the minimum funding requirements.

Issue

The Pension Policy Working Group has discussed the general question of funding waivers and, working with the IRS and the PBGC, is examining a number of alternatives to the current arrangements.

One issue, however, requires immediate action since it is part of the proposed Single Employer Pension Plan Amendments.

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Should the Administration include as part of its proposed pension legislation a provision that would give a pension plan a statutory lien on the sponsor's assets when a funding waiver is granted?

This provision is similar to a provision that was included in the single employer legislation introduced in the 98th Congress and reported out by the Senate Labor Committee. While the provision would not alter the process by which funding waivers are granted, it would provide greater protection to the PBGC in those instances when a sponsor who has been given a waiver terminates the plan.

Both the Internal Revenue Service and the Department of Labor have expressed reservations about possible conflict of interest problems that arise with a statutory lien provision. To perfect a lien, plan administrators must take action that is in direct conflict with their interest in the company that is sponsoring the plan. The PBGC has proposed that to avoid conflict of interest problems, a plan administrator would be required to perfect the lien only at the direction of the PBGC. The PBGC could direct perfection of the lien only where the waived amounts or the plan's unfunded vested benefits exceed statutorily specified de minimis amounts.

The IRS has also questioned the effect of a security interest on existing and potential creditors of the employer. In general, a security interest that would protect the PBGC would make other creditors less willing to loan money to a troubled firm.

Options

- Option 1: Include in the Single Employer Pension Plan Act Amendments of 1985 a provision that would give a pension plan a statutory lien on the sponsor's assets when a funding waiver is granted.
- Option 2: Do not include in the Single Employer Pension Plan Act Amendments a provision that would give a pension plan a statutory lien on the sponsor's assets when a funding waiver is granted.

The Pension Policy Working Group along with the IRS and the PBGC are examining several alternatives to the current arrangements including:

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1. Replacing actuaries with financial analysts in the funding waiver process so that the financial viability of a firm can better be assessed.

2. Requiring plan sponsors who receive a funding waiver to post a bond, escrow, or letter of credit in favor of the plan, when appropriate.

3. Making waiver requests subject to public comment to give plan participants a better opportunity to participate in the decision to grant a waiver.

4. Providing for expanding the waiver authority to formally include the PBGC possibly through a dual approval system involving the IRS and the PBGC.

5. Reevaluating the appropriateness of funding waivers.

Some of these alternatives could be undertaken administratively. Others would require legislative action.

The Working Group will report to the Cabinet Council on its evaluation of these alternatives as promptly as possible.